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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,143	03/22/2006	Franz-Josef Te Baay	ACR3012P1US	6111

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EXAMINER

CARR, DEBORAH D

ART UNIT	PAPER NUMBER
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1621

MAIL DATE	DELIVERY MODE
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07/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,143	Applicant(s) TE BAAY ET AL.	
	Examiner DEBORAH D. CARR	Art Unit 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3 April 2008 regarding the rejection of claims 1-23 under 35USC§103 have been fully considered but they are not persuasive and the rejection is maintained.
2. The arguments regarding claim 7 rejected under 35USC§112, 2nd paragraph was persuasive and the rejection has been withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-22 rejected under 35 U.S.C. 103(a) as being unpatentable over WO-97/24420 in view of Copeland et al. (US Pat. 6,423,857).

Applicant's Arguments

The oil and/or fats treated by the process disclosed in the '420 publication is phosphorus-rich, for example, egg yolk lipids which have 30-40% by weight of phospholipids. See page 6, lines 2-6 and lines 16-17; page 2, lines 3-7; page t8-24; and page 14, lines 1-6.

The hydrolytic splitting step disclosed in the '420 publication is a saponification step. See page 8, lines 9-13. In this regard, although the '420 publication mentions that the hydrolysis of lipid mixture may be catalyzed by an acid, there is no further explanation nor reference to the acid catalyzed method in the '420 publication.

The heat-treating step in the '420 publication is to convert sterols present in the crude fatty acid mixture to sterol fatty acid esters. See page 6, lines 24-27.

The '857 patent, it teaches a method for recovering free fatty acids during purification of vegetable oil. See column I, lines 2-13. Applicants submit that none of the above-described deficiencies of the primary reference are disclosed in the '857 patent.

Examiner's Response

It is well established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art. The process in US'420 exemplifies egg yolk in the working examples but clearly discloses other applicable lipids such as marine animals and vegetables. Egg yolks were used to exemplify lipid mixture extraction process. See page 7, lines 22-35 thru page 8, lines 1-8. While US'420 does not further expound on the use of acids to hydrolyze the lipid mixture, it does disclose acids can be used. As stated supra, the reference is not limited by the working examples but is evaluated by what it discloses.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., amount of fatty acids produced which are lost during the heating step in US'420) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The term “comprising” is considered open and includes other steps that are not recited. US'420 use the heating step as a means of reducing the amount of sterols present by esterification of the sterols present to produce sterol esters. This esterification step included in the heating step may not be recited in the instant process but is embraced by the term comprising. It should be noted that if any monoglycerides were present they would be treated and reduced in the heating step of US'420.

In response to applicant's argument that US'857 teaches a method for recovering free fatty acids during purification of vegetable oil, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Pretreating crude oils is conventionally known as shown in US'857, which is why it was cited. Applicant discloses in the specification pretreatment of the oils to reduce the phosphorus content below 200pm. One can say the pretreatment of the oils used in the instant invention is a purification step because contaminants are removed that hindered the preparation of purified fatty acids.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBORAH D. CARR whose telephone number is (571)272-0637. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyles can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deborah D Carr/
Primary Examiner
Art Unit 1621

Ddc